



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

SAN FRANCISCO REGION
901 Market Street, Suite 220
San Francisco, California 94103-1791
(415) 356-5000 Fax: (415) 356-5017

September 25, 2012

Peter Hein
P.O. Box 26262
Santa Ana, CA 92799

Re: National Treasury Employees Union
Washington, D.C.
Case No. SF-CO-12-0349

Dear Mr. Hein:

The Region investigated your charge that the National Treasury Employees Union engaged in an unfair labor practice by refusing to file a grievance that you requested that it file. You do not allege that lack of Union membership was why NTEU refused to file your grievance. Where union membership is not the issue, a union breaches the duty of fair representation under section 7114 (a)(1) of the Statute when it acts arbitrarily or in bad faith, deliberately and unjustifiably treating one or more bargaining unit employees differently from other unit employees.¹ In this case there is insufficient evidence that the Union acted arbitrarily or in bad faith or otherwise violated its duties under the Statute. For this reason, I am not issuing a complaint in this case.

Relevant Facts Revealed in the Investigation

You are an employee of the Department of Health and Human Services, Office of the Secretary, Office of Medicare Hearings and Appeals (Activity). You are included in a bargaining unit of certain Office of Secretary employees represented by NTEU. You are not a member of the Union.

When the Activity hired you in November 2011, it incorrectly processed your Thrift Savings Plan (TSP) paperwork. As a result of the error, your payroll department incorrectly took a TSP deduction from your first check. You notified the Activity of its error and the deduction was immediately stopped. But, an Activity HR Representative told you that you would have to submit certain forms to get the first deduction back. One of the forms you had to submit required notarization. You asked an Activity Representative if it could waive or pay the notary fee, in light of the fact that the error was theirs and not yours. After the Activity refused, you contacted the Union for resolution of the issue.

On February 9, 2012, you asked an NTEU Chapter Representative to file a grievance on your behalf concerning the notary fees. The following day, the Chapter Representative refused, stating that he did not believe the matter involved a grievable issue. You contacted the Chapter

¹ See e.g. *NFFE, Local 1827*, 49 FLRA 738 (1994)(*NFFE*).

President, who stood by the Chapter Representative's decision not to file a grievance. You sent an e-mail to the President of NTEU, advising her of your situation and the Chapter's refusal to file a grievance on your behalf. The NTEU President did not reply to your e-mail.

Applicable Law and Application of Law to Facts

As mentioned above, a union can violate section 7114(a)(1) of the Statute by deliberately and unjustifiably treating one or more bargaining unit employees differently from other unit employees. A union does not violate the Statute by acting negligently, but rather must have acted arbitrarily or in bad faith, and the union's action must have led to disparate, discriminatory treatment of a bargaining unit employee.² Here, there is insufficient evidence that the Union acted arbitrarily or in bad faith when it refused to file a grievance on your behalf. The duty of fair representation does not require a union to file all grievances, as requested.

There is insufficient evidence that the Union acted arbitrarily or in bad in deciding not to file your grievance. In particular, I note that the Union never led you to believe that it was filing your grievance, depriving you of an opportunity to file your own grievance.³ Since the evidence does not establish that the Union's conduct violated the Statute, I am dismissing your charge.

Right to file an appeal

If you want to file an appeal of my decision you may do so with the General Counsel of the FLRA at the following address and fax number:

Federal Labor Relations Authority
Office of the General Counsel (Attn: Appeals)
1400 K St., N.W., Second Floor
Washington, D.C. 20424-0001
Fax No. 202-482-6608

You have a deadline to file an appeal and must file your appeal no later than **October 29, 2012**. This means that if you mail your appeal, you must postmark it by **October 29, 2012**. If you deliver or fax your appeal you must do that by the same date. You may also file an appeal, or a request for extension of time to appeal, by e-mail, to ogc.appeals@flra.gov. Please put the case number in the subject line of your e-mail message. Also, please send a copy of your appeal to the San Francisco Regional Office.

If you need more time to prepare your appeal, you may ask the General Counsel for an extension. The General Counsel must receive your request for an extension by **October 24, 2012**.

² NFFE.

³ See, for example, *Int'l Ass'n of Machinists & Aerospace Workers, Local 39, AFL-CIO*, 24 FLRA 352 (1986).

If you want to know how the General Counsel decides whether or not to grant an appeal, please review section 2423.11(e) of the Authority's Regulations on the Authority's web site: http://www.flra.gov/OGC_Appeals

Sincerely,



Jean M. Perata
Regional Director

Enclosure: Questions and Answers About Appeals

cc:

Julia Akins Clark, General Counsel
Office of the General Counsel
Federal Labor Relations Authority
1400 K Street NW, Second Floor
Washington, D.C. 20424-0001

Timothy J. Sheridan, Asst. General Counsel
National Treasury Employees Union
Oakland Field Office
1330 Broadway, Suite 1501
Oakland, CA 94612



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April 27, 2012

Peter Martin Hein
P.O. Box 15201
Newport Beach, CA 92659

Michael Roberts, President
National Treasury Employees Union, Chapter 12
C/O FDA
300 W. Congress, Room 4P, Box FB55
Tucson, AZ 85701

Re: National Treasury Employees Union, Chapter 12
Case No. SF-CO-12-0349

Dear Parties:

Enclosed is a copy of the unfair labor practice charge which has been filed with this Office and assigned the case number shown above. To complete the investigation expeditiously, and to make a determination as to the merits of the charge, it is important that the parties cooperate fully during the ensuing investigation of the charge. You will be contacted shortly by the Agent who has been assigned to investigate the charge. If you have any questions, please contact directly either the Agent or Regional Point of Contact indicated below.

If you are the party who filed the charge (Charging Party) and have not already done so, please submit the following so that it is received by this Office by **May 11, 2012**:

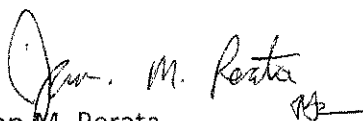
1. A list of witnesses – names, positions, day and evening telephone numbers, and a summary of their expected testimony about their personal knowledge of the charge
2. Copies of all relevant documents, with an Index if submission is voluminous

Section 2423.4(e) of the FLRA's Regulations requires that you provide this evidence/information. If you did not submit any evidence or information when you filed the charge and do not provide the material noted above so that this Office has **received** it by **May 11, 2012**, the charge may be dismissed for lack of cooperation. The Charging Party is responsible for confirming that all supporting evidence and information has been received by the date noted above.

If you are the party against whom this charge is filed (Charged Party), you are requested to review the allegations in the charge and submit a written position to this Office. You also are expected to cooperate fully in the investigation and will be asked by the Agent to supply documentary evidence or witnesses as is deemed necessary.

To assist both parties in understanding how an unfair labor practice charge is processed, I have enclosed an information sheet describing the investigatory process. Also, if someone other than you will be representing your party in this matter, please complete the enclosed "Notice of Designation of Representative."

Sincerely,

A handwritten signature in dark ink, appearing to read "Jean M. Perata", with a stylized flourish at the end.

Jean M. Perata
Acting Regional Director

Assigned to: Authority Agent Yolanda Shepherd-Eckford
(415) 356-5000, ext. 2016
yshepherd-eckford@flra.gov

Enclosed: Description of Unfair Labor Practice Investigation Procedure
Notice of Designation of Representative



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST A LABOR ORGANIZATION

FOR FLRA USE ONLY

Case No. SF-CO-12-0349Date Filed 04/20/2012

Complete instructions are on the back of this form.

1. Charged Labor Organization

Name: National Treasury Employees Union

Address: 1750 H Street, N.W.
Washington, D.C. 20006Tel.#: 202-572-5500 Ext.

Fax#:

2. Charging Party (Individual, Labor Organization, Activity, or Agency)

Name: Peter Martin Hein

Address: PO Box 15201
Newport Beach, CA 92659Tel.#: 949-788-8083 Ext.

Fax#:

3. Charged Labor Organization Contact Information

Name: Michael Roberts

Title: President NTEU Chapter 212

Address: michael.roberts@fda.hhs.gov

Tel.# 520-670-4895 Ext.

Fax#:

4. Charging Party Contact Information

Name: Peter Martin Hein

Title: tecapete@yahoo.com

Address: PO Box 15201
Newport Beach, CA 92659

Tel.#: Ext.

Fax#:

5. Which subsection(s) of 5 U.S.C. 7116(b) and/or (c) do you believe have been violated? [See reverse] (b) (5) & (b) (6)

6. Tell exactly WHAT the labor organization did. Start with the DATE and LOCATION, state WHO was involved, including titles.

NTEU failed to provide representation on a payroll issue in which pay was reduced without cause or authorization. This reduction in pay was noticed in November of 2011 and raised with HHS administration who failed to provide an acceptable remedy. NTEU 212 Shop Steward Sean McKee failed to file a grievance or seek a remedy for this unauthorized deduction (TSP). NTEU Chapter President Michael Roberts was evasive and ultimately unreachable, but did not act to secure a refund of said unauthorized payroll deduction despite being provided with documentation. NTEU National President Colleen Kelley ignored an emailed plea for action. (See email submissions associated with this charge).

NTEU also failed to provide assistance, through grievance procedures, in claimant's Schedule A application processing with Federal agencies resulting in denial of rights under the Schedule A hiring authority.

7. Have you or anyone else raised this matter in any other procedure? ☒ No ☐ Yes If yes, where? (see reverse) _____8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX #3 BY [check "x" box] ☒ Fax ☐ 1st Class Mail ☐ In Person☐ Commercial Delivery ☐ Certified Mail

Peter Martin Hein

Type or Print Your Name

Your Signature

04/20/2012

Date

Attn:

Intake (charge)

NOT a return
Fax number !

Contact by email ---
tecapete@yahoo.com